

Dear Clerk,

5/21/17 (mailed 5/22)

Enclosed is a letter I wrote to my attorney, James Rytting, regarding corrections, changes and additions that need to be made to his Reply brief (Dkts 76 & 77). Would you please simply scan it into my Docket records & place it in my file?

United States Court
Southern District of Texas
FILED

Thank you very much.

MAY 24 2017

David J. Bradley, Clerk of Court

Sincerely,



Robert Alan Fratta

4:13-cv-03438

Mr. Rytting,

5/20/17 (mailed 5/22/17)

I received the copy of your 5/4/17 Reply on 5/18/17 (which was posted on or about the 15th). In some parts you did a great job. In other parts there are corrections, changes & additions that NEED to be made, & which I certainly want made in some kind of amended Reply RIGHT AWAY. First I'd like to point out what you wrote at the bottom of p.15. You stated: "Appellate counsel failed to respond to correspondence and did not arrange to visit Fratta to discuss the causes of actions Fratta proposed." You rightly criticized my previous counsel. Now please recognize you have done me the exact same way! Had you done as I asked from the onset - of drafting your original petition up long in advance & meeting with me about it until it was to my satisfaction, then this entire federal appeal process would have been resolved years ago & I never would have had to submit any pleadings to the Court that agitated Judge Harmon. I pleaded with you to visit me BEFORE filing your last 2 briefs also, but you didn't. I'm old (60) & tired. I do NOT want to be sent back to State courts - except ONLY as an absolute last resort; which is contrary to the door you opened in your brief. I believe I HAVE exhausted every issue, including the Brady one, as I've explained to you numerous times all these years, & you never told me you disagreed. Yet for some odd reason you neglected to argue this vital point for the Brady claim, & inconceivably completely MISREPRESENTED ME by stating "I" (Fratta) concede it's not exhausted. NO Mr. Rytting, - I/Fratta most certainly do NOT concede such a thing! I vehemently argue I DID exhaust the Brady issue also - as I'll explain to you AGAIN, below.

Following are the IMPORTANT corrections & changes that need to be made - & which I'm insisting you make as my "causes of action" I've been proposing to you from the onset. You also need to visit or call me right away so I can also go over the typos & lesser corrections with you. It's been OVER A YEAR SINCE YOU'VE VISITED ME on 5/19/16 or called. Kindly DO the following:

I. Under this number "I." - A. 1.; perhaps just prior to the "In sum..." paragraph on p.2, add/insert a sentence saying something like: "Furthermore, Fratta is NOT charged with conspiracy under 7.02(b) of the law of parties."

Under A. 2., p.4, 3rd bullet, change: "who paid Guidry money that Fratta supposedly gave Prystash" to the correct facts of: "was to pay Guidry from money Prystash was supposedly to be paid from Fratta." (The fact is I never paid anything to anyone! Gipp's written statement even says that).

Under A. 2., p.6, 3rd from last line, here again you misrepresented the facts & need to restructure that sentence to be accurate. Perhaps to: "...evidence that Guidry was to be paid with money Prystash was supposedly to be paid from Fratta

excluded, the State..."

Under D. 6., p.14, please add a sentence stating that my filings satisfied both elements of a "compelling reason" & "that the interests of justice would be served." Also under this D. 6., it should be noted that D/R inmate John Battaglia's federal judge allowed him to file hybrid pleadings.

Under E. 2., p.16, you quoted Martinez v. CA., yet utterly failed to state the most important aspect of that S.Ct. ruling. As I duly noted in my certiorari I filed after State habeas, Martinez goes on to state: "States are NOT precluded from recognizing such [right to self-representation] under their own constitutions." And as I've told you dozens of times & have insisted you file, Texas Const. Article 1 Section 10 states: "In all criminal prosecutions the accused shall have...the right of being heard BY HIMSELF or counsel, OR BOTH." That right extends at least thru direct appeal, & I asserted that right NUMEROUS TIMES in my motions which you need to attach as Exhibits. (I also asserted that right in my pretrial arraignment, but then Judge Hill denied me. See transcripts). You need to argue all this a lot better, including making changes on p.18. In the 2nd paragraph I want you to add: Fratta had a right under Texas law "and Texas Constitution". And add the fact that the CCA flat out DENIED my motions requesting to be pro se (in addition to the fact they "refused to recognize" my requests). Here again you're omitting the most important aspect of things & must add all this in, & attach my motions AND all the CCA's rulings denying those motions/requests to be pro se. My requests & the denials are critical to show constitutional errors, & that my insufficiency claims are all exhausted - as you correctly raised under F.

Under G. 2., p.21, you quoted about the communications between Prystash & Guidry. As I've pointed out to you previously & in my corrections I submitted to the Clerk (See Docket #53); there's NO evidence showing WHO called whom. Granted, the State is claiming Guidry had the cell phone at some point, but there was no evidence to actually show who made which calls at all! So please state that fact rather than treating what the State claims as fact. Perhaps Barlow was the one who used the cell phone. The point is - only the actual parties & God know.

Under G. still, on p.22, that 2nd "2." should be "3.", & "3." on p.24 should be "4." And under what should be "4." on p.24, add again the fact that I am not charged with conspiracy under 7.02(b).

II. Under your "II." E. on p.30, here again please add about no 7.02(b) conspiracy is charged against me.

III. Under this III. B. 4. d., p.36, 2nd paragraph, 1st sentence, change the 1st

"Barlow" to "Guidry", as it is Guidry who has the greater stature than Barlow.

Still on p.36, I want you to bump your current III. "C." down to be "D." in order to insert a new "C." regarding my Proposed Findings of Fact and Conclusions of Law ("PFFCL"). I went thru great emotional, mental & physical duress to get designated as pro se only by the trial court on 8/22/13 for my State habeas. My main purpose for doing so was to exhaust issues - since I anticipated neither court would dismiss my ineffective attorney's filing as a non-application & appoint the Office of Capital Writs to file anew. In my PFFCL, which was the ONLY PFFCL filed on my behalf since my attorneys (Patrick McCann & Carmen Roe) were dismissed in that 8/22/13 hearing, I made it clear there was Brady evidence that needed to be expanded on. On p.7 of my PFFCL, read from the 12th sentence on down, then the 3rd-8th sentences of p.8, & the 4th & 5th paragraphs on p.10. You need to cite all this, & attach my PFFCL as an Exhibit. In *Goodrum v. Quarterman*, 547 F3d 249 (5th Cir, '08), etc, they ruled: "The exhaustion requirement is **satisfied** when the substance of the federal habeas claim has been FAIRLY PRESENTED TO THE HIGHEST STATE COURT, either through direct appeal or STATE HABEAS PROCEEDINGS." I fairly presented the Brady issue to the CCA within my PFFCL in State habeas proceedings, & the CCA (like the trial court) made a clear "DECISION" to adopt the State's PFFCL over granting me any kind of hearing or relief via my PFFCL. Therefore I HAVE exhausted the Brady claim & I insist you argue this fact that I went thru hell to accomplish. Let Judge Harmon read my PFFCL (& all my motions requesting pro se, & all the denials the CCA made against me) so SHE can determine exhaustion & constitutional rights being violated. **RETRACT that concession**, argue this properly, & let Judge Harmon be the judge.

For your current III. D. on page 37, it would need to be changed to "E." due to the insertion of the new "C." I cited above, AND, I want you to REDO IT COMPLETELY. As I just pointed out above, I DID exhaust the Brady issue. All you would need to point out under "E." is that IF Judge Harmon rules I have not exhausted the Brady issue, then in the alternative she should send me back to State court, - but **ONLY IF** she has denied the 1st 2 issues under the sufficiency of the evidence. And I want you to state that.

The same applies to your final paragraph (on p.53). You currently state "or that the Court stay and abate...", & I insist that be omitted. Here again you can say something like what I just wrote above, - that "should the Court deny Counts 1 & 2, & determine the Brady claim in Counts 3 & 4 are not exhausted, THEN stay and abate & send back to State court." (Something like that ONLY). But I feel confident that if you argue what I stated above for the sufficiency claims, Judge Harmon

WILL follow the laws & uphold my constitutional rights - & rule I be acquitted as you requested therein.

As I've brought to your attention many times, I also feel you should add in there somewhere - the fact that the same Asst. A.G., Ellen Stewart-Klein, made it an issue in her Brief in Opposition to my certiorari - that: "The Relief Fratta Seeks Can Be Had in Federal Habeas Corpus Litigation". (Read & attach that brief as an Exhibit too). How can she now do a 180° turnaround & argue I cannot get relief in this federal habeas proceeding? She's going against her own words & that should constitute **misconduct** as an attorney AND State official.

Again, there are more corrections needed - which I'll go over with you when you visit or call. Meanwhile, please draw up a draft of all the corrections & changes I've listed herein RIGHT AWAY in some form of amendment or whatever is necessary to be accepted by Judge Harmon, & mail it to me or bring it to me during visit so we can go over it all for you to file/refile.

Thank you & I certainly hope to see you or speak with you SOON. Again, it's been over a year!

Sincerely,



Robert A. Fratta

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U.S. District Court
Southern District of Texas
FILED
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David J. Bradley, Clerk of Court

NORTH HOUSTON TX 77003
23 MAY 2017 FILED
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON, TEXAS



LEGAL

Clerk of Court

U.S. Southern District

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